

15

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

P J Cotter,
Plaintiff,
vs.
GMAC MORTGAGE, LLC,
Defendants

Case No. 2:12-cv-15382-NGE-LJM

Judge Nancy G. Edmunds
Magistrate Judge Laurie J. Michelson

PJ Cotter
6243 Church Road
Fair Haven, MI 48023
810-689-9231
pocmich@yahoo.com

Thomas M. Schehr (P54391)
Nasseem S. Ramen (P73513)
Attorneys for Defendant

Dykema Gossett PLLC
400 Renaissance Center, 37th floor
Detroit, MI 48243
313-568-5326

U.S. DIST. COURT CLERK
EAST DIST. MICHIGAN
DETROIT

2013 AUG - 7 P 12:09

**PLAINTIFF'S OBJECTION TO ORDER ACCEPTING AND ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION [11]**

Now comes Plaintiff PJ Cotter (hereinafter Plaintiff), unrepresented by counsel, and hereby
Contents and Accordingly Enters his Objection to Judge Nancy G. Edmunds rendering a ORDER
ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [11] , due to the fact that said ORDER is Statutorily defective for the
substantiated reason as follows.

PLAINTIFFS DOCUMENTED FACTS

1. Plaintiff filed COMPLAINT in STATE OF MICHIGAN IN THE CIRCUIT COURT FOR
THE COUNTY OF SAINT CLAIR on November 28, 2012, Case No. 12-002946-CH
#1 Exhibit (top sheet of Complaint)

- 1 2. Plaintiff Motion for Hearing set for December 10, 2012. Case No. 12-002946-CH
2 St Clair County Docket Details Exhibit #2 (Details item #7)
- 3 3. December 7, 2012 Defendant filed "NOTICE OF REMOVAL by GMAC Mortgage, LLC
4 from St. Clair County Circuit Court, case number 2012-002946-CH." **Exhibit #2, Item #7**
5 (CIVIL DOCKET FOR CASE #: 2:12-cv-15382-NGE-LJM (herein after CDS) CDS
6 Exhibit #3 Document 1 Notice of Removal to Federal Court.
7 CDS #1 giving jurisdiction to this court.
- 8 4. December 14, 2012 Defendant filed "MOTION to Dismiss by GMAC Mortgage, LLC."
9 Exhibit #3 Civil Docket sheet document # 2
- 10 5. February 11, 2013 Defendant filed "REPLY to Response re: 2 MOTION to Dismiss filed by
11 GMAC Mortgage, LLC" CDS #8.
- 12 6. March 7, 2013 Defendant filed "RESPONSE to 9 MOTION for Judgment for Failure of
13 Defendant to Answer Discovery filed by GMAC Mortgage, LLC." CDS #10.
- 14 7. Defendant has failed to comply with:
15
16 Federal Rules of Civil Procedure Rule 12

17 (a). TIME TO SERVE A RESPONSIVE PLEADING

18
19 (1) *In General.* Unless another time is specified by this rule
20 or a federal statute, the time for serving a responsive
21 pleading is as follows:

22 (A) A defendant must serve an answer

23 Federal Rules of Civil Procedure Rule 7

24 Pleadings Allowed; Form of Motions and Other Papers

25 (a) Pleadings. Only these pleadings are allowed:

26 (1) a complaint;

- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

8. It is clearly evidence by the Docket sheet, that the Defendants filing did not follow well settled law. Defendants are in violation of the rules of Federal Rules of Civil Procedure Rule 12. (a)(1)(A) and Federal Rules of Civil Procedure Rule 7. Pleadings Allowed; Form of Motions and Other Papers.
9. The record clearly reflects that Defendant GMAC MORTGAGE LLC, did not timely file an answer to Plaintiff's Complaint, as required by F. R. Civ. P. Rule 12. (a) (1) (A) (i), nor did Defendant request extension of time to answer. Defendant's untimely Rule 12. (b) (6) Motion To Dismiss Plaintiff's Complaint, does not toll the time for Defendant to answer Plaintiff's Complaint.

Federal Rules of Civil Procedure Rule 12 (b) does not allow for any ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [11] to be issued when the defendant has clearly violated Rule 12. (a)(1)(A) and Federal Rules of Civil Procedure Rule 7. Pleadings Allowed; Form of Motions and Other Papers by their tortuous actions recorded in the documents filed into this Honorable court has confirmed in the CDS.

1 WHEREFORE, for good cause, shown, the facts, law, and Defendant has entered no admissible
2 evidence in the record:

3 to wit CDS
4

5 Plaintiff moves the court to honor (i) PLAINTIFF'S OBJECTION TO ORDER ACCEPTING AND
6 ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [11]

7 Plaintiff further moves the court to (ii) dismiss Defendants actions in this court with prejudice (iii)
8 moves the Court, Order that the restraining order granted by state court (Dkt. 1, Pg ID 124-
9 25) be Affirmed (iv) grant such further relief in Plaintiff's favor as is appropriate under the
10 circumstances.
11

12
13 I declare under penalty of perjury under the laws of the United States of America that the foregoing
14 statements are true and correct to the best of my knowledge.
15

16 Executed this 7th day of August 2013, at Saint Clair County, Michigan.
17

18 
19

20 PJ Cotter
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CERTIFICATE OF SERVICE

I P J Cotter certify that on this 7th day of August 2013 a copy of the foregoing documents filed in the U.S. District Court In The Eastern District of Michigan Southern Division, were served upon the following parties via U.S.P.S. first class mail

Thomas M. Schehr (P54391)
Nasseem S. Ramen (P73513)
Attorneys for Defendant
Dykema Gossett PLLC
400 Renaissance Center, 37th floor
Detroit, MI 48243
313-568-5326

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of August 2013, at Saint Clair County, Michigan.


PJ Cotter

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAINT CLAIR

P J Cotter,

Plaintiff,

Case :

Hon.



v

GMAC MORTGAGE, LLC

Defendant,

ORLANS ASSOCIATES, P.C.
P.O. Box 5041
Troy Michigan 48007
248-502-1400

P J Cotter
6243 Church Rd
Fair Haven Mi. 48023
810-459-6972

COMPLAINT

PLAINTIFF'S EX-PARTE MOTION FOR EMERGENCY RESTRAINING ORDER
AND FOR ORDER TO SHOW CAUSE

JURISDICTIONAL ALLEGATIONS

1. Plaintiff P J Cotter has owned the real property, material to this complaint commonly known as 6243 Church Road, Fair Haven, Saint Clair County, Michigan since 1999.
2. Defendant GMAC MORTGAGE, LLC is a Michigan Foreign Limited Liability Company organized under the laws of Delaware.
3. The acts complained of took place in Saint Clair County.
4. This court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

St. Clair County Court Docket Details

<http://www.stclaircounty.org/DCS/DocketDetails.aspx>

CLOSED

RVO

12-002946-CH

JUDGE KELLY

File 11/28/2012

Adj Date 12/11/2012

Close 12/11/2012

Party Info Num	Events Date	Judge	Chg/Pty	Event Description/Comments	New Search Clerk
1	11/28/2012	KELLY		COMPLAINT/PLTFS EXPARTE MOTION FOR EMERGENCY RESTRAINING ORDER & FOR ORDER TO SHOW CAUSE	JJS
2				ORDER GRANTING PLTFS EMERGENCY MOTION FOR TEMPORARY RESTRAIN- ING ORDER & TO SHOW CAUSE	JJS
3				PROOF OF SERVICE FILED	JJS
4	11/29/2012			PROOF OF SERVICE FILED	JJS
5				PROOF OF SERVICE FILED	JJS
8	12/4/2012			PRAECIPE/NTC OF HRG 12/10/12	JJS
6	12/5/2012			PRAECIPE FILED, DATE SET FOR: 12/10/2012 10:00 AM	MK
7	12/10/2012			STOP FORECLOSURE MOTION HEARING MOTION HEARING TO STOP FORECLOSURE - INFORMED VIA PHONE 12/7 FILED IN FEDERAL COURT. PLAINTIFF INFORMED TO CONTACT DEFENDANT.	MK
9	12/11/2012		00999	TRANSFER TO FEDERAL COURT	JJS
10				REMOVAL ORDER TO US DIST COURT EASTERN DIST OF MI	JJS
11	12/27/2012			JUDICIAL NOTICE	JJS

**U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:12-cv-15382-NGE-LJM**

Cotter v. GMAC Mortgage, LLC

Assigned to: District Judge Nancy G. Edmunds

Referred to: Magistrate Judge Laurie J. Michelson

Case in other court: St. Clair County Circuit Court, 12-
002946-CH

Cause: 28:1331(a) Fed. Question: Real Property

Date Filed: 12/07/2012

Date Terminated: 08/02/2013

Jury Demand: None

Nature of Suit: 220 Real Property:
Foreclosure

Jurisdiction: Federal Question

Plaintiff

PJ Cotter

represented by **PJ Cotter**

6243 Church Road
Fair Haven, MI 48023
810-459-6972
PRO SE

V.

Defendant

GMAC Mortgage, LLC

represented by **Thomas M. Schehr**

Dykema Gossett
400 Renaissance Center
Detroit, MI 48243
313-568-6800
Fax: 313-568-6659
Email: tschehr@dykema.com
ATTORNEY TO BE NOTICED

Nasseem S. Ramin

Dykema Gossett
400 Renaissance Center
Detroit, MI 48243
313-568-6800
Fax: 313-568-6893
Email: nramin@dykema.com

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/07/2012	<u>1</u>	NOTICE OF REMOVAL by GMAC Mortgage, LLC from St. Clair County Circuit Court, case number 2012-002946-CH. Receipt No: 0645-3846386 - Fee: \$ 350 [Previously dismissed case: No] [Possible companion case(s): None] (Ramin, Nasseem) (Entered: 12/07/2012)
12/10/2012		A United States Magistrate Judge of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form is available for download at http://www.mied.uscourts.gov (PMil) (Entered: 12/10/2012)
12/14/2012	<u>2</u>	MOTION to Dismiss by GMAC Mortgage, LLC. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit A - Mortgage, # <u>3</u> Exhibit B - September 2006 Correspondence from GMAC, # <u>4</u> Exhibit C - GMAC QWR Responses, # <u>5</u> Exhibit D - Affidavits of Publication and Posting, # <u>6</u> Exhibit E - Unpublished Cases) (Ramin, Nasseem) (Entered: 12/14/2012)
12/17/2012	<u>3</u>	ORDER Referring All Pretrial Matters to Magistrate Judge Laurie J. Michelson re <u>2</u> Motion to Dismiss,. Signed by District Judge Nancy G. Edmunds. (CHem) (Entered: 12/17/2012)
12/17/2012		TEXT-ONLY CERTIFICATE OF SERVICE re <u>3</u> Order Referring Pretrial Matters to Magistrate Judge on PJ Cotter, 6243 Church Road, Fair Haven MI 48023 (CHem) (Entered: 12/17/2012)
12/21/2012	<u>4</u>	JUDICIAL NOTICE filed by PJ Cotter (KKra) (Entered: 12/21/2012)
12/27/2012	<u>5</u>	Notice of Determination of Motion Without Oral Argument re <u>2</u> MOTION to Dismiss : Response due by 1/25/2013 and Reply due by 2/8/2013 (JJoh) (Entered: 12/27/2012)
12/27/2012		TEXT-ONLY CERTIFICATE OF SERVICE re <u>5</u> Notice of Determination of Motion Without Oral Argument on PJ Cotter at 6243 Church Road, Fair Haven, MI 48023. (JJoh) (Entered: 12/27/2012)
12/27/2012	<u>6</u>	NOTICE of Appearance by Thomas M. Schehr on behalf of GMAC Mortgage, LLC. (Schehr, Thomas) (Entered: 12/27/2012)
01/28/2013		RE-SET Deadlines as to <u>2</u> MOTION to Dismiss : Plaintiff's Response due by 1/30/2013 and Defendant's Reply due by 2/11/2013 - Entered by Magistrate Judge Laurie J. Michelson. (JJoh) (Entered: 01/28/2013)
01/28/2013		TEXT-ONLY CERTIFICATE OF SERVICE re Set Motion and R&R Deadlines/Hearings, on PJ Cotter at 6243 Church Road, Fair Haven, MI 48023. (JJoh) (Entered: 01/28/2013)
01/28/2013	<u>7</u>	Verified MOTION to deny <u>2</u> Unverified MOTION to Dismiss by PJ Cotter. (DWor) (Entered: 01/29/2013)

02/11/2013	<u>8</u>	REPLY to Response re <u>2</u> MOTION to Dismiss filed by GMAC Mortgage, LLC. (Attachments: # <u>1</u> Exhibit A - Glazer v. Chase Home Finance, LLC) (Ramin, Nasseem) (Entered: 02/11/2013)
02/15/2013	<u>9</u>	MOTION for Judgment for Failure of Defendant to Answer Discovery by PJ Cotter. (KKra) (Entered: 02/15/2013)
03/07/2013	<u>10</u>	RESPONSE to <u>9</u> MOTION for Judgment for Failure of Defendant to Answer Discovery filed by GMAC Mortgage, LLC. (Ramin, Nasseem) (Entered: 03/07/2013)
06/17/2013	<u>11</u>	REPORT AND RECOMMENDATION to Grant <u>2</u> MOTION to Dismiss filed by GMAC Mortgage, LLC - Signed by Magistrate Judge Laurie J. Michelson. (JJoh)[REPORT AND RECOMMENDATION RE: <u>2</u> MOTION TO DISMISS AND <u>9</u> MOTION FOR JUDGMENT] Modified on 6/20/2013 (DPer). (Entered: 06/17/2013)
06/17/2013		TEXT-ONLY CERTIFICATE OF SERVICE re <u>11</u> REPORT AND RECOMMENDATION re <u>2</u> MOTION to Dismiss filed by GMAC Mortgage, LLC on PJ Cotter at 6243 Church Road, Fair Haven, MI 48023. (JJoh) (Entered: 06/17/2013)
07/01/2013	<u>12</u>	OBJECTION to <u>11</u> Report and Recommendation by PJ Cotter. (DTyl) (Entered: 07/02/2013)
07/03/2013	<u>13</u>	MOTION for Extension of Time to File Reply to Report and Recommendation to Grant Defendant's Motion to Dismiss by PJ Cotter. (KKra) (Entered: 07/03/2013)
07/15/2013	<u>14</u>	RESPONSE to <u>12</u> Objection to Report and Recommendation by GMAC Mortgage, LLC. (Ramin, Nasseem) (Entered: 07/15/2013)
07/17/2013	<u>15</u>	ORDER Granting in Part Plaintiff's <u>13</u> MOTION for Extension of Time to File Reply to <u>11</u> REPORT AND RECOMMENDATION re <u>2</u> MOTION to Dismiss (Reply due by 7/29/2013.) Signed by District Judge Nancy G. Edmunds. (Monda, H) (Entered: 07/17/2013)
07/17/2013		TEXT-ONLY CERTIFICATE OF SERVICE re <u>15</u> Order, Terminate Motions, Set Motion and R&R Deadlines/Hearings,,, on PJ Cotter at 6243 Church Road, Fair Haven, MI 48023. (Monda, H) (Entered: 07/17/2013)
08/01/2013	<u>18</u>	ORDER to Strike 16 Amended Complaint filed by PJ Cotter, and 17 Summons Issued. Signed by Magistrate Judge Laurie J. Michelson. (JJoh) (Entered: 08/01/2013)
08/01/2013		TEXT-ONLY CERTIFICATE OF SERVICE re <u>18</u> Order to Strike on PJ Cotter at 6243 Church Road, Fair Haven, MI 48023. (JJoh) (Entered: 08/01/2013)
08/02/2013	<u>19</u>	ORDER Accepting and Adopting Magistrate Judge's <u>11</u> Report and Recommendation re <u>2</u> Motion to Dismiss. Signed by District Judge Nancy G. Edmunds. (Monda, H) (Entered: 08/02/2013)

08/02/2013	<u>20</u>	JUDGMENT. Signed by District Judge Nancy G. Edmunds. (Monda, H) (Entered: 08/02/2013)
08/02/2013		TEXT-ONLY CERTIFICATE OF SERVICE re <u>19</u> Order Adopting Report and Recommendation, <u>20</u> Judgment on PJ Cotter at 6243 Church Road, Fair Haven, MI 48023. (Monda, H) (Entered: 08/02/2013)

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

P J Cotter,)
Plaintiff,)
vs.)
GMAC MORTGAGE, LLC,) Case No. 2:12-cv-15382-NGE-LJM
Defendants)
Plaintiff's MEMORANDUM in
SUPPORT of OBJECTION TO ORDER
ACCEPTING AND ADOPTING
MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION [11]

CHAPTER 2. CIVIL PROCEDURE
MICHIGAN COURT RULES OF 1985

Subchapter 2.100 Commencement of Action; Service of Process; Pleadings; Motions
Rule 2.101 Form and Commencement of Action

(A) Form of Action. There is one form of action known as a "civil action."

(B) Commencement of Action. A civil action is commenced by filing a complaint with a court.

Federal Rules of Civil Procedure

RULE 12. DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED; MOTION FOR JUDGMENT ON THE PLEADINGS; CONSOLIDATING MOTIONS; WAIVING DEFENSES; PRETRIAL HEARING

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

1 (2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The
2 United States, a United States agency, or a United States officer or employee sued only in an
3 official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days
4 after service on the United States attorney.

5 (3) *United States Officers or Employees Sued in an Individual Capacity.* A United States
6 officer or employee sued in an individual capacity for an act or omission occurring in connection
7 with duties performed on the United States' behalf must serve an answer to a complaint,
8 counterclaim, or crossclaim within 60 days after service on the officer or employee or service on
9 the United States attorney, whichever is later.

10 (4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule
11 alters these periods as follows:

12 (A) if the court denies the motion or postpones its disposition until trial, the responsive
13 pleading must be served within 14 days after notice of the court's action; or

14 (B) if the court grants a motion for a more definite statement, the responsive pleading must
15 be served within 14 days after the more definite statement is served.

16 (b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be
17 asserted in the responsive pleading if one is required. But a party may assert the following defenses
18 by motion:

19 RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS AND OTHER PAPERS

20 (a) PLEADINGS. Only these pleadings are allowed:

21 (1) a complaint;

22 (2) an answer to a complaint;

23 (3) an answer to a counterclaim designated as a counterclaim;

24 (4) an answer to a crossclaim;

25 (5) a third-party complaint;

26 (6) an answer to a third-party complaint; and

27 (7) if the court orders one, a reply to an answer.

28 (b) MOTIONS AND OTHER PAPERS.

(1) *In General.* A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

(2) *Form*. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Regarding the supremacy of law in the imperishable language of the Court, "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government..... Courts of justice are established, not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government... ." 106 U.S. at 220, 1 S.Ct. at 261, C.B.S. Imports Corp. v. U.S., 450 F.Supp. 724, 728 (1978).

CERTIFICATE OF SERVICE

I P J Cotter certify that on this 7th day of August 2013 a copy of the foregoing documents filed in the U.S. District Court In The Eastern District of Michigan Southern Division, were served upon the following parties via U.S.P.S. first class mail

Thomas M. Schehr (P54391)
Nasseem S. Ramen (P73513)
Attorneys for Defendant
Dykema Gossett PLLC
400 Renaissance Center, 37th floor
Detroit, MI 48243
313-568-5326

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of August 2013, at Saint Clair County, Michigan.

PJ Cotter